

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Video Description: Implementation of the)	MB Docket No. 11-43
Twenty-First Century Communications and)	
Video Accessibility Act of 2010)	

**COMMENTS OF THE
NCTA—THE INTERNET & TELEVISION ASSOCIATION**

NCTA – The Internet & Television Association (“NCTA”)¹ hereby responds to the *Public Notice* in the above-captioned proceeding.²

INTRODUCTION

NCTA welcomes the opportunity to update the Commission on the cable industry’s efforts to provide consumers with programming that contains video description (“DVS”). In the years since the Commission’s last video description report to Congress, the amount of video-described material on cable systems has grown substantially. Cable customers today have ever-increasing options for viewing programming with video description on both linear networks and on-demand, and cable programmers go over and above the law’s requirements to make sure that viewers are aware of their options. In addition, cable operators have deployed technology that makes it easier than ever to locate that programming on cable systems. These advancements will

¹ NCTA is the principal trade association of the cable television industry in the United States, which is a leading provider of residential broadband service to U.S. households. Its members include owners and operators of cable television systems serving nearly 80 percent of the nation’s cable television customers, as well as more than 200 cable program networks. Cable service providers have invested more than \$290 billion over the last two decades to deploy and continually upgrade networks and other infrastructure—including building some of the nation’s largest Wi-Fi networks.

² FCC, Public Notice, *Media Bureau Seeks Comment on Recent Developments in the Video Description Marketplace to Inform Report to Congress*, DA 19-40 (Feb. 4, 2019) (“Notice”).

continue as technological improvements over time will provide even more methods for easily finding video-described programming.

I. CONSUMERS HAVE MORE DESCRIBED PROGRAMMING THAN EVER BEFORE, AND MORE WAYS TO FIND OUT WHERE AND WHEN IT IS AIRING.

Since July 1, 2012, cable systems (and other MVPDs) with 50,000 or more subscribers have been required to provide at least 50 hours per calendar quarter of prime time or children’s programming containing video description on each of the top five non-broadcast networks they carry.³ In 2017, the Commission adopted rules that increased the total number of hours of described programming to 87.5 hours per calendar quarter.⁴ As of 2018, USA, HGTV, TBS, Discovery and History are considered to be the top five national non-broadcast networks for these purposes.⁵

This is the second report mandated by Congress related to video description in television programming⁶ and, as described below, the cable industry has made significant strides in this area since the 2014 FCC Report to Congress.⁷ The top five cable networks, along with others, are airing many hours of programming with video description. These include many hours in

³ See 47 C.F.R. § 79.3(b)(4). The rules also obligate MVPDs of any size to “pass through” programming containing video description, unless certain exceptions apply. Cable operators also carry broadcast stations that may provide video-described programming.

⁴ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report & Order, 32 FCC Rcd. 5962 (2017).

⁵ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Order & Public Notice, 33 FCC Rcd. 4915 (2018).

⁶ See 47 U.S.C. § 613(f)(4)(c)(iii). The Twenty-First Century Communications and Video Accessibility Act of 2010 (“CVAA”) requires the Commission to report on the (1) “types of described video programming that is available to consumers”; (2) “consumer use of such programming”; (3) “the costs to program owners, providers, and distributors of creating such programming”; (4) “the potential costs to program owners, providers, and distributors in designated market areas outside of the top 60 of creating such programming”; (5) “the benefits to consumers of such programming”; (6) “the amount of such programming currently available”; and (7) “the need for additional described programming in designated market areas outside the top 60.”

⁷ *Video Description: Implementation of the Twenty-First Century Communications and Video Accessibility Act of 2010*, Report to Congress, 29 FCC Rcd. 8011 (2014).

excess of the 87.5 hours each quarter mandated by the Commission’s rules. Those rules only consider certain video-described programming to “count” toward meeting that obligation⁸ and, as a result, fail to capture all the programming that is available with video description. Focusing only on “countable” hours masks the reality that there has been and will continue to be a sizable increase in the amount and diversity of programming with video description that customers can enjoy on their cable systems. The total amount of video-described material on cable systems far exceeds the minimum number of video-described hours mandated under the rules when one takes into account all the video-described programming that is available both on linear channels and on-demand.

A. The Cable Industry Is Providing an Increasing Amount of Programming on Linear Networks with Video Description.

Cable customers increasingly can view many hours of video description on many of the diverse networks offered on their cable system.⁹ Video description is now available on a wide variety of programming genres, such as reality television, new entertainment series, feature films, and syndicated programming.¹⁰ Customers increasingly can access programs with video description during many different day parts, as programs that contain video description premiere in prime time and are re-aired with video description outside of prime time.

⁸ 47 C.F.R. §79.3 (c)(2) (allowing MVPDs to count toward the quarterly hour requirement each program it airs with video description no more than two times per network.)

⁹ Video description remains a time-intensive undertaking. As a result, networks need sufficient lead time between creation of a program and airing to include video description in the final product. Operational considerations can sometimes interfere with programmers’ ability to include video description in new episodes of a series.

¹⁰ The *Notice* asks what mechanisms cable operators use to verify the amount of described programming they provide and whether this information is publicly available. *See Notice* ¶ 7. The rules permit cable operators to rely on certifications from programmers to demonstrate compliance with the rules. *See* 47 C.F.R. § 79.3(e)(3)(i). Cable operators may also include private contractual provisions in programming agreements that address matters related to compliance with the rules.

For example, USA Network typically offers newly produced non-live programming with video description. These programs include popular series such as *Mr. Robot*, *Suits*, *Chrisley Knows Best*, *Psych*, *Colony* and *the Sinner*. The network also offers a range of video-described off-network programming, such as *Modern Family*, *Law & Order: SVU*, *Chicago P.D.* and *NCIS*. In addition, USA Network includes in its schedule a variety of full-length feature films that contain video description, including blockbusters such as the *Harry Potter* films and the *Fast and Furious* franchise.¹¹

USA Network averaged more than 1500 hours of described programming each quarter last year, without regard to repeats. It described more than three quarters of its newly-produced non-live programming that was aired between 6:00 a.m. and midnight.¹²

TBS provides a diverse array of prime-time programming with video description, including most scripted original series and most movies. For example, TBS airs DVS on all episodes of *American Dad*, *Bob Burgers*, *Family Guy*, *Friends*, *Seinfeld*, *New Girl*, *Brooklyn Nine-Nine*, as well as *2 Broke Girls* and *Big Bang Theory*.¹³

HGTV strives to ensure that all viewers, including those with disabilities, can enjoy HGTV programming. It selects programming for video description from among its most popular, first run programming. For example, recent video-described programming includes *Beach Hunters*, *Beachfront Bargain Hunt*, *Caribbean Life*, *Property Brothers*, *House Hunters*, and *House Hunters International*.¹⁴ These programs are aired frequently throughout the day on

¹¹ See <https://www.usanetwork.com/accessibility>

¹² Only a fraction of that substantial body of described programming is eligible to be counted under the FCC's overly-restrictive policy on counting video-described programming. See NCTA Petition for Partial Reconsideration, Docket No. 11-43 (filed Sept. 11, 2017).

¹³ See <https://www.tbs.com/dvs-offerings>

¹⁴ See <https://www.hgtv.com/about-us/HGTV-Video-Description>

the linear network, so that video described programming is available for substantially more hours than the rules require. Moreover, HGTV groups its programming into blocks of time (*e.g.*, multiple episodes in a row), and often the entire programming block is video-described, allowing a viewer to continue to watch the channel without interruption.

Discovery Channel selects from among its most popular programming for video description, particularly new or first-run programming. These programs include such hits as *Alaskan Bush People*, *Deadliest Catch*, *Gold Rush*, *Expedition Unknown*, *Naked and Afraid*, and *Street Outlaws*.¹⁵ Video description continues to be available as these programs repeat after their first airing, meaning that there are many more hours each quarter of video-described programming than are counted for FCC rule compliance purposes. During the first six months alone that Discovery Channel was subject to the rules, approximately 400 hours of video-described programming aired in addition to those hours that counted towards the required hours. Discovery Channel also strives for continuity by video-describing all programming episodes that are part of a particular program to provide viewers with a complete season with video description.

History Channel also offers a wide variety of reality television programming with video description. Programs are generally provided with video description for their premiere airings and then all subsequent airings of those programs will be offered with video description. Some recent series with DVS include *American Pickers*, *Ancient Aliens*, *Mountain Men*, *Pawn Stars*, *Swamp People*, and *Vikings*.¹⁶

¹⁵ See <https://www.discovery.com/general/descriptive-video-service>

¹⁶ See <http://www.history.com/schedule/video-description>

Several other cable networks (in addition to the currently covered top five networks) voluntarily air programming with video description, including some networks that previously were covered by the FCC's rules. For example, most of the first run shows on TNT are video-described.

In short, cable customers can find many programs throughout the day on linear cable networks that contain video description.

B. Information About Video-Described Programming Is Readily Available to Cable Customers.

Technological advancements have made it easier than ever for customers to access programming that is video-described. When the Commission issued its last *Report* to Congress on video description, several of these developments were in the works, but had not yet become widely available. Now, cable systems have launched their "talking guides," which provide audible on-screen text menus and guides for blind customers that simplify navigating to programming with video description. Additionally, set-top boxes now enable individuals with disabilities to more easily access certain functions on their set-top boxes and television sets. In combination, these developments make it much easier to find the programming that is carried with video description on a cable system.

For example, certain newer cable system set-top boxes enable their customers to access a dedicated section of the program guide that aggregates content available with video description on the cable system. Users can access guide data about current shows airing with video description as well as upcoming programming schedules for other described shows that air throughout the day. Comcast X1 customers can access a dedicated collection page for described programming by saying "described shows" or "described movies" into their remote control. They can then use the voice guidance system on the X1 platform to browse a library of several

hundred described movie and TV series titles and press the “OK” button on their remote to make a selection.¹⁷ The X1 program guide also audibly announces whether each program listed on the guide features video description.¹⁸

Information about which individual programs are video-described is also available through individual program networks, and in some cases, through icons included in the program guide. Many programming networks proactively send information to the guide data listing services that identifies their video-described offerings. In addition, programming networks have publicized schedules of the content available with video description on their websites¹⁹ and, in some cases, provide this information over the telephone.²⁰ Much of this information is aggregated and made available through a project headed by the American Council of the Blind.²¹ The American Foundation for the Blind²² and National Federation of the Blind²³ also provide information about video-described offerings. At the request of the FCC, while not required by the rules, many programmers inform the Commission about which programming is video-described, making the Commission another source for certain aggregated information.²⁴

¹⁷ See “Find Programs that have Video Description for Xfinity X1,” at <https://www.xfinity.com/support/articles/x1-find-programs-with-video-description>.

¹⁸ Comcast also makes video described content available via its Stream TV app.

¹⁹ See, e.g., usanetwork.com/accessibility; history.com/schedule/video-description

²⁰ USA Network, for example, publicizes telephone access through its website and on the FCC’s video description webpage.

²¹ See <http://acb.org/adp/>

²² <http://www.afb.org/tv.aspx>

²³ <https://nfb.org/programs-services/nfb-newsline>

²⁴ See FCC, *FCC Encyclopedia, Video Description*, at <http://www.fcc.gov/encyclopedia/video-description> (last visited Mar. 26, 2019).

C. On-Demand Programming Is Also Increasingly Available with DVS.

Several cable programmers make their video-described content available for use on-demand. As NCTA previously explained, cable operators face technical limitations that inhibit their ability to offer video-on-demand (“VOD”) programming with video description.²⁵ Those limitations still remain for many cable systems. Nonetheless, the cable industry has overcome these issues in some cases and has made significant strides in enhancing its offering of on-demand titles that contain DVS.²⁶

For example, Cox Communications has a section within its video-on-demand offerings labelled “descriptive video,” which contains titles with DVS. Comcast’s X1 set-top boxes can play back multiple audio streams, permitting on-demand content to feature video description along with multiple language options. This capability has led to a significant increase in the amount of VOD content over even the last year, and, as noted, Comcast now offers several hundred titles of on-demand content. Cable operators will continue to look for ways to provide an increasing number of on-demand titles that contain DVS.

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In short, either in linear networks or on-demand, consumers have more described programming than ever before on their cable system, and more ways to find out where and when it is airing.

²⁵ NCTA Comments, MB Docket No. 11-43, at 11-13 (June 27, 2016).

²⁶ *See Notice* ¶ 11.

II. THERE IS STILL A NEED TO BALANCE COMPETING USES OF THE SECONDARY AUDIO STREAM.

The *Notice* asks about “developments in the marketplace that are enabling or will enable apparatus to handle more than two audio tracks.”²⁷ Since their inception, the rules have been balanced to accommodate multiple uses of the second audio stream on which video description is typically located. The rules generally require cable operators and other MVPDs to pass through video description if technically capable, and to include video description in subsequent airings of a described program, *except* where the operator is using that capability “for another purpose related to the programming that would conflict with providing the video description.”²⁸ While the two audio stream system used by industry is the only way currently to serve legacy equipment,²⁹ the industry is working on evolutionary changes that will allow video description users to avoid the conflict with other users on that stream.

Industry is aware of the interest in facilitating greater and easier access to video-described programming to avoid conflicts with foreign language programming that may occupy this same audio stream, and is working to achieve that end. Cable operators are offering more than two audio streams where it is feasible. For example, Comcast’s X1 set-top boxes currently support multiple audio streams for certain on-demand content. To the extent programmers deliver such content with separate language and DVS audio tracks, X1 customers have the ability to select the audio track they want to hear.

In addition, the Society of Cable Telecommunications Engineers (“SCTE”) has developed a recommended practice for carriage of multiple audio streams. Last year, SCTE

²⁷ *Id.* ¶ 8.

²⁸ 47 C.F.R. §§ 79.3(b)(5), 79.3(c)(4).

²⁹ *See* NCTA Comments, MB Docket No. 12-107, at 10-15 (July 23, 2013); NCTA Comments, MB Docket No. 11-43, at 4-7 (Apr. 28, 2011).

completed work on an operational practice that describes methods and practices for distributing multiple audio streams, languages and services within cable and program provider systems, while continuing to support legacy equipment requirements.³⁰

In time, as legacy equipment is replaced, cable operators will have additional flexibility to avoid these conflicts. In the meantime, the cable industry continues to develop better methods for identifying and tuning to video description to help enhance the experience for users.

CONCLUSION

For the foregoing reasons, the Commission should report to Congress that significant progress is being made in the provision of video description to cable customers.

Respectfully submitted,

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³⁰ Society of Cable Telecommunications Engineers, SCTE 248 2018 (“Operational Practice on Multiple Audio Signaling”).